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September 2, 2005

Via Electronic Filing

Ms. Marlene H. Dortch
Secretary
Federal Communications Commission
445 12th Street, SW
Washington, D.C. 20554

Re: TracFone Wireless Petition for Forebearance,
Federal-State Joint Board on Universal Service, CC Docket No. 96-45

Dear Ms. Dortch:

On behalf of our client TDS Telecommunications Corp., this letter is being filed to respond to the August 31, 2005 letter by TracFone Wireless, Inc. and to report on ex parte communications on September 1-2, 2005 by the undersigned with Commission staff to review the points in this letter.

- I. The focus of the Commission's recent activities in connection with the Universal Service Fund has been on ensuring integrity in the oversight and administration of the Fund and promoting rigorous review in the designation of ETCs. The Commission should ensure that these goals are not compromised by granting the TracFone Forbearance Petition and Petitions for ETC Designation, or if that step is taken, by failing to adopt meaningful requirements to prevent abuse of the Fund.
- II. The Commission should not allow carriers to seek Lifeline-only ETC designation without adopting and enforcing appropriate criteria to ensure that such designation will promote the goals of universal service.
 - TracFone has yet to demonstrate compliance with existing ETC designation criteria (for high-cost support) nor proposed alternative criteria for a "Lifeline-only" ETC.
 - Specific criteria for Lifeline-only ETC designation should be specified to maintain the Commission's commitment to ensuring that USF support is paid only to carriers that are truly committed to advancing the goals of universal service.
 - We agree with the conditions proposed by USTelecom in its August 30, 2005 ex parte filing in this docket. Those conditions provide a useful checklist for the Commission

to follow to cabin in the TracFone petition so that it does not present more problems than foreseen today.

III. TracFone has not demonstrated that the service it provides will satisfy the Commission's and consumers' expectations for a "Lifeline" service.

- A number of elements of the TracFone program, as detailed in TracFone's July 15, 2005 Supplement, are not consistent with the goal of providing an available, "Lifeline" connection to the public telephone network.
- TracFone's proposed Lifeline service is costly in comparison to basic local wireline service. Note that the plans described in the July 15 ex parte specify the prices for less expensive equipment and services (e.g., handsets under TracFone plans and per-minute usage charges under NET10 plans) but not for those that are more expensive (e.g., usage prices under TracFone plans and handset prices under NET10 plans).
 - For example, the TracFone service will provide 30 minutes per month (1 minute/day) of prepaid calling for free, with additional minutes (which likely will be needed by a consumer using the TracFone as the primary phone) available at half the normal price. But the plan does not say what the normal price per minute is, so it is difficult to predict how much the typical consumer is likely to have to pay to maintain telephone service throughout the month.
 - The NET10 plan (offered on more expensive handsets) provides discounts off a typical price of \$.10 per minute, but a consumer will still have to pay around \$20 per month for only 300 minutes (10 minutes per day) of calling time, which again may not be sufficient for the typical consumer who relies on a prepaid phone as their primary phone.
- As described in our initial comments on the TracFone Forbearance Petition, the TracFone service does not allow for toll blocking and thus does not allow the consumer to maintain a low-cost service that ensures persistent connectivity to the local network. Although the TracFone service does not charge extra for long-distance calls, it also does not allow the consumer to reserve any minutes for critical local calls. A consumer could use up all of his or her minutes on long-distance calling and thereby lose access to any service unless the consumer has the financial resources to purchase additional minutes.¹

¹ Prior TracFone filings have indicated that calls to 911 from TracFone handsets will always be connected even if no prepaid minutes are available. Those calls will apparently have E911 capability only if the underlying facilities-based carrier whose services TracFone is reselling has such capability.

- There is no assurance that the TracFone service offers any sort of persistent connectivity to the public telephone network. TracFone contends that the purpose of the Lifeline program is “to provide affordable service to low income consumers,” and that the TracFone service delivers such affordability because consumers can always control their costs by purchasing only the minutes they can afford. Supplement at 6-7. But this fails to recognize that the Lifeline program consists of two elements: affordability and service. The TracFone program may offer predictability and affordability for a specified number of minutes, but it is not clear that the programs offered are sufficient to provide the type of ongoing service that the Lifeline program contemplates for consumers.

IV. Meaningful and enforceable standards are necessary.

- Given the untested nature of the TracFone business plan, the potential for systems to go awry or not fully implemented, and the need for additional rulings in collateral proceedings, the Commission should proceed cautiously in disbursing Lifeline support and maintaining enforceable standards.
- TDS has argued in all the ETC proceedings that the Commission’s requirements are rather hollow because there has been very little followup and no enforcement. That is a recipe for a program not meeting its objectives, or worse. In this proceeding, we agree with the recommendation of USTelecom that the Commission should make clear that failure to abide by any conditions would result in revocation of ETC status. We have proposed that mechanism in other contexts, and find it especially appropriate here.

V. This petition raises numerous issues which should be addressed by an imminent notice of proposed rulemaking.

- As outlined by the filings in this docket, the TracFone petition raises scores of interrelated issues that have not been fully explored, especially as they would apply to other possible providers. If the instant petition is granted, the Commission should expect a flurry of “copycat” filings that could foreclose reasoned decisionmaking. Consequently, we urge the Commission to move expeditiously on a rulemaking to address these important questions in a systematic manner.
- The Commission should make explicit that it will not consider similar petitions until the rulemaking is complete. Otherwise, the Commission again will be left with a series of one-off decisions without a comprehensive policy in place.

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Please direct any questions to the undersigned.

Sincerely,

A handwritten signature in black ink, appearing to read "G. Waldron".

Gerard J. Waldron

Mary Newcomer Williams

Counsel for TDS Telecommunications Corp.

cc: Ms. Michelle Carey
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